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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

Dept.: C35

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DAVID H. YAMASAKI, Clerk of the Court
BY: R. PEACE, DEPUTY

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**
9

10 PEOPLE OF THE STATE OF CALIFORNIA,

11 *Plaintiff,*

12 vs.

13 JOHN DOES 1-58,

14 *Defendant.*

Case No.: M-17638

REQUEST FOR UPDATE FROM
THE SPECIAL MASTER AND
REQUEST FOR EVIDENTIARY
HEARING WITH TESTIMONY;
POINTS AND AUTHORITIES

15
16 **MOTION**
17

18 The Orange County Public Defender's Office hereby requests this court make the
19 following orders concerning the illegally recorded attorney-client privileged phone calls from
20 Orange County Jail:

- 21 (1) Require the Special Master to provide an immediate update and information
22 regarding his progress in identifying the clients and lawyers affected by the
23 unlawful recording and unlawful recording/accessing of attorney-client phone calls
24 from the jail with respect to, at a minimum, the list of 1079 and the list of 58;
25 (2) Order an evidentiary hearing with live testimony to determine the full scope of the
26 unauthorized recordings.

27 This request is based upon the attached Points and Authorities, argument of counsel,
28 and any evidence introduced at the hearing.

1 **POINTS AUTHORITIES AND ARGUMENTS**

2 **Introduction**

3 This Court previously requested that counsel consider which global sanctions or
4 remedial measures might be appropriate given the new information continually coming to light
5 about the recorded phone calls at Orange County Jail. Before addressing such sanctions,
6 counsel requests this Court order the Special Master to provide an update as to his progress in
7 investigating which clients and attorneys have had their phone calls recorded and/or accessed.
8 Secondly, given the conflicting and ever-evolving information provided by GTCL with regard
9 to how many calls have been recorded, defense is requesting that this court conduct an
10 evidentiary hearing to permit counsel to fully flesh out exactly how many calls were recorded
11 and how many were accessed by law enforcement and the prosecution team.

12 **I. THIS COURT SHOULD REQUIRE THE SPECIAL MASTER TO**
13 **PROVIDE AN UPDATE AS TO HIS PROGRESS IN INVESTIGATING**
14 **WHICH CLIENTS AND ATTORNEYS HAVE BEEN RECORDED AND**
15 **WHICH INMATES HAD THEIR PHONE CALLS ACCESSED BY LAW**
16 **ENFORCEMENT**

17 This Court proactively appointed a Special Master to ensure that attorneys and their
18 clients would receive information about whether or not their phone calls were recorded and
19 whether those phone calls were accessed by law enforcement. Once each attorney received
20 that information, the idea was that each attorney could then pursue any necessary remedial
21 measures or sanctions as appropriate on their individual cases. Each attorney could
22 furthermore conduct her own investigation to determine whether the prosecution team
23 unlawfully accessed and utilized this information and what prejudice may have befallen her
24 client.

25 Defense is certainly aware that the task of locating this information is significant;
26 however, the Special Master has been assigned to this matter for two months and, as far as
27 counsel is aware, has yet to produce results. It is unknown how many and which cases have
28 resolved or proceeded to motion or trial without this information. It is unknown whether and
to what extent law enforcement has utilized this unlawfully obtained information for its own

1 strategic advantage. The fear is quite clearly that with each passing moment, defendants facing
2 certain odious penalties, such as imprisonment or even capital punishment, have been unable
3 to effectively litigate their cases without this crucial information. Moreover, the potential loss
4 of evidence, witnesses, and defenses is staggering. Certainly, these criminal defendants are
5 entitled to this information and can afford to be patient no longer.

6 Thus, counsel requests this Court order the Special Master to provide an update as to
7 his investigation regarding Public Defender clients at this hearing. If a list of the names
8 associated with the booking numbers found on the list of 1079 and the list of 58 accessed calls
9 is not provided in court at this hearing, counsel requests that the Special Master be ordered to
10 appear in this court with this information no later than Friday, October 25, 2018.

11 **II. THE INFORMATION GTEL HAS PROVIDED IS DEMONSTRABLY**
12 **FALSE AND THUS THIS COURT SHOULD ORDER AN**
13 **EVIDENTIARY HEARING**

14 Over the course of this litigation, it has become apparent that GTEL has provided
15 demonstrably inaccurate information as to how many phone calls have been recorded and how
16 many calls have been accessed by law enforcement and shared with the prosecution team.¹
17 With each witness testimony, each court appearance, and each filing, GTEL has provided
18 conflicting and at times, dubious, information with respect to how many phone calls were

19
20 ¹ For example, a few weeks ago during an informal hearing in the *Waring* case, counsel for
21 the Public Defender's Office was told that the main number for the Orange County Public
22 Defender's Office, (714) 834-2144, was on the designated GTEL "private" list. The
23 designated "private" list was supposedly the only list that was properly uploaded when GTEL
24 had its "software glitch" (or "human error," depending on which GTEL employee is speaking
at which time). Despite this, the Public Defender's main number appears on the list of 1,079
calls a total of 7 times in an 8 day period in July 2016.

25 GTEL has thus far been unable to explain (1) why there are no other calls to this main number
26 in the three year period on the list of 1,079; (2) how a so-called "private" number was recorded
27 when the "private" numbers were allegedly uploaded properly during the glitch/human error;
28 or (3) how it is possible that these calls were only recorded 7 times in 8 days. Counsel asked
the GTEL reps these questions in an informal setting during the *Waring* case, but GTEL was
unable or unwilling to answer these questions.

1 recorded, why they were recorded, and which calls were accessed and by whom.

2 It is undeniable that the calls on the GTEL lists represent merely the tip of the recorded
3 phone call iceberg. Thus, in order for this Court to effectuate its orders, and for the Public
4 Defender's Office to effectively represent its clients, counsel requests an evidentiary hearing
5 to permit continued analysis of these issues.

6
7 **CONCLUSION**

8 Public defender clients are in dire need of information concerning these recorded phone
9 calls. The lack of information thus far is negatively impacting the ability of the Public
10 Defender's Office to litigate on behalf of their clients. Therefore, defense requests that the
11 Special Master be ordered to provide updated information with regard to each defendant on
12 the list of 1079 recorded calls and the list of 58 recorded/accessed calls. If that information is
13 not available at the time of the hearing on this matter, it is respectfully requested that the
14 Special Master be ordered to return on Friday, October 25, 2018, with this information.

15 In addition, defense respectfully requests an evidentiary hearing to permit further
16 examination into GTEL's claims regarding the recorded and accessed phone calls.

17 DATED: October 24, 2018

18 Respectfully submitted,
19 SHARON L. PETROSINO
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21 Orange County

22 *Sara Ross*

23 _____
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27 Writs & Appeals Unit
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